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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Respondent,

No. CR S-95-0411 GEB KJM P

13 vs.

14 CONRAD GARCIA-GUIZAR,

ORDER

15 Movant.  
16 \_\_\_\_\_/

17 Two matters are pending before this court. The first is a motion to vacate, correct,  
18 and set aside movant's sentence under 28 U.S.C. § 2255. Movant alleges, among other things,  
19 that trial counsel Charles Benninghoff was ineffective in failing to communicate to the court  
20 movant's desire to plead to the indictment without a plea agreement and in misadvising him  
21 about the likely consequences of standing trial. He also alleges that appellate counsel, Assistant  
22 Federal Defender Ann McClintock, failed to advise him of the possibility that a greater sentence  
23 would be imposed on remand from a successful appeal. The court has determined an evidentiary  
24 hearing is necessary to explore these representations and, if they are established, the prejudice  
25 flowing from them. Counsel therefore will be appointed to represent movant as to these two

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1 issues only. Movant may be required to reimburse the costs of counsel depending on the  
2 resolution of his second motion, for the return of property.

3           On September 9, 2005, the government filed its opposition to movant's motion for  
4 the return of property. Counsel is directed to file a further response, addressing the relationship  
5 between the BNE task force and the federal government. Counsel should support that response  
6 with evidence, including but not limited to the search warrant and its return, and other evidence  
7 bearing on the question of an agency relationship between the state and federal governments.  
8 See United States v. Huffhines, 986 F.2d 306, 308 (9th Cir. 1993); see also United States v.  
9 Albinson, 356 F.3d 278, 281 (3d Cir. 2004). In addition, counsel should discuss the relevance of  
10 docket no. 52. See also 4/30/96 RT at 26.

11           1. The Federal Defender's Officer is directed to find counsel to represent movant  
12 on the two claims identified above.

13           2. The Clerk's Office is directed to send a copy of the motion to vacate sentence  
14 filed April 10, 2002, the government's opposition filed August 27, 2002, and the reply filed  
15 November 13, 2002 to the Federal Defender's Office; the Federal Defender's Office is directed to  
16 provide these copies to counsel.

17           3. A status hearing is set for Wednesday, March 15, 2006, at 10:00 a.m. in  
18 Courtroom 26 regarding the motion to vacate sentence.

19           4. The Clerk's Office is directed to serve a copy of this order on the Federal  
20 Defender's Office.

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1           5. Within forty-five days of this order, counsel for the government is directed to  
2 respond to the court's inquiries in connection with the motion for return of property. Movant  
3 may file any opposition or additional information within thirty days of the date the government's  
4 response is filed.

5 DATED: February 22, 2006.

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9 UNITED STATES MAGISTRATE JUDGE  
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